condition indicating possible substance abuse or after receiving credible information that an individual is engaging in substance abuse, as defined in § 26.5;

(3) Post-accident. As soon as practical after an event involving a human error that was committed by an individual specified in § 26.4(f), where the human error may have caused or contributed to the accident. The licensee or other entity shall test the individual(s) who committed the error(s), and need not test individuals who were affected by the event but whose actions likely did not cause or contribute to the event. The individual(s) who committed the human error(s) shall be tested if the event resulted in—

(i) A significant illness or personal injury to the individual to be tested or another individual, which within 4 hours after the event is recordable under the Department of Labor standards contained in 29 CFR 1904.7, and subsequent amendments thereto, and results in death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or other significant illness or injury as diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness; or

(ii) Significant damage, during construction, to any safety-or security-related SSC; and

(4) Followup. As part of a followup plan to verify an individual's continued abstinence from substance abuse.

(d) At a minimum, licensees and other entities shall test specimens for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acetylmorphine), amphetamines (amphetamine, methamphetamine), phencyclidine, adulterants, and alcohol at the cutoff levels specified in this part, or comparable cutoff levels if specimens other than urine are collected for drug testing. Urine specimens collected for drug testing must be subject to validity testing.

(e) The specimen collection and drug and alcohol testing procedures of FFD programs under this subpart must protect the donor's privacy and the integrity of the specimen, and implement stringent quality controls to ensure that test results are valid and attributable to the correct individual. At the licensee's or other entity's discretion, specimen collections and alcohol testing may be conducted at a local hospital or other facility under the specimen collection and alcohol testing requirements of 49 CFR Part 40 and subsequent amendments thereto.

(f) Testing of urine specimens for drugs and validity, except validity screening and initial drug and validity tests that may be performed by licensee testing facilities, must be performed in a laboratory that is certified by HHS for that purpose, consistent with its standards and procedures for certification. Any initial drug test performed by a licensee or other entity subject to this subpart must use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. Urine specimens that yield positive, adulterated, substituted, or invalid initial validity or drug test results must be subject to confirmatory testing by the HHS-certified laboratory, except for invalid specimens that cannot be tested. Other specimens that yield positive initial drug test results must be subject to confirmatory testing by a laboratory that meets stringent quality control requirements that are comparable to those required for certification by the HHS.

(g) Licensees and other entities shall provide for an MRO review of positive, adulterated, substituted, and invalid confirmatory drug and validity test results to determine whether the donor has violated the FFD policy, before reporting the results to the individual designated by the licensee or other entity to perform the suitability and fitness evaluations required under § 26.419.

§ 26.406 Fitness monitoring.

(a) The requirements in this section apply only if a licensee or other entity does not elect to subject the individuals specified in § 26.4(f) to random testing for drugs and alcohol under § 26.405(b).

(b) Licensees and other entities shall implement a fitness monitoring program to deter substance abuse and detect indications of possible use, sale, or possession of illegal drugs; use or possession of alcohol while constructing safety-or security-related SSCs; or impairment from any cause that if left unattended may result in a risk to public health and safety or the common defense and security.

(c) Licensees and other entities shall establish procedures that monitors shall follow in response to the indications and actions specified in paragraph (b) of this section and train the monitors to implement the program.

(d) Licensees and other entities shall ensure that the fitness of individuals specified in §26.4(f) is monitored effectively while the individuals are constructing safety- and security-related SSCs, commensurate with the potential risk to public health and safety and the common defense and security imposed by the construction activity. To achieve this objective, licensees and other entities shall consider the number and placement of monitors required, the necessary ratio of monitors to individuals specified in §26.4(f), and the frequency with which the individuals specified in §26.4(f) shall be monitored while constructing each safety- or security-related SSC.

§26.407 Behavioral observation.

While the individuals specified in §26.4(f) are constructing safety- or security-related SSCs, licensees and other entities shall ensure that these individuals are subject to behavioral observation, except if the licensee or other entity has implemented a fitness monitoring program under §26.406.

§26.409 Sanctions.

Licensees and other entities who implement an FFD program under this subpart shall establish sanctions for FFD policy violations that, at a minimum, prohibit the individuals specified in §26.4(f) from being assigned to construct safety- or security-related SSCs unless or until the licensee or other entity determines that the individual's condition or behavior does not pose a potential risk to public health and safety or the common defense and security.

§26.411 Protection of information.

(a) Licensees and other entities who collect personal information about an individual for the purpose of complying with this subpart shall establish and maintain a system of files and procedures to protect the personal information. FFD programs must maintain and use such records with the highest regard for individual privacy.

(b) Licensees and other entities shall obtain a signed consent that authorizes the disclosure of the personal information collected and maintained under this subpart before disclosing the personal information, except for disclosures to the individuals and entities specified in §26.37(b)(1) through (b)(6), (b)(8), and persons deciding matters under review in §26.413.

§26.413 Review process.

Licensees and other entities who implement an FFD program under this subpart shall establish and implement procedures for the review of a determination that an individual in §26.4(f) has violated the FFD policy. The procedure must provide for an objective and impartial review of the facts related to the determination that the individual has violated the FFD policy.

§26.415 Audits.

(a) Licensees and other entities who implement an FFD program under this subpart shall ensure that audits are performed to assure the continuing effectiveness of the FFD program, including FFD program elements that are provided by C/Vs, and the FFD programs of C/Vs that are accepted by the licensee or other entity.

(b) Each licensee and other entity shall ensure that these programs are audited at a frequency that assures their continuing effectiveness and that corrective actions are taken to resolve any problems identified. Licensees and entities may conduct joint audits, or accept audits of C/Vs conducted by others, so long as the audit addresses the relevant C/Vs' services.

(c) Licensees and other entities need not audit HHS-certified laboratories or the specimen collection and alcohol